

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

|                                |   |                          |
|--------------------------------|---|--------------------------|
| In re Application of:          | ) |                          |
|                                | ) |                          |
| Shinobu AKUZAWA et al.         | ) | Group Art Unit: 1611     |
|                                | ) |                          |
| Application No.: 10/589,892    | ) | Examiner: Kevin S. Orwig |
|                                | ) |                          |
| Filed: August 18, 2006         | ) |                          |
|                                | ) | Confirmation No.: 2819   |
| For: PROPHYLACTIC ANTIMIGRAINE | ) |                          |
| AGENTS                         | ) |                          |

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**Via EFS-Web**

Sir:

**SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT**  
**UNDER 37 C.F.R. § 1.97(b)**

Pursuant to 37 C.F.R. §§ 1.56 and 1.97(b), Applicant brings to the attention of the Office the documents listed on the attached IDS Form PTO/SB/08. This Supplemental Information Disclosure Statement is being filed before the mailing date of a first Office Action on the merits for the above-referenced application. Therefore, pursuant to 37 C.F.R. § 1.97(b)(3), no fee is due for its proper consideration.

Copies of the listed foreign and non-patent literature documents are attached. Pursuant to 37 C.F.R. § 1.98(a)(2)(iii), copies of the listed U.S. patents and patent application publications are not enclosed. Applicant respectfully requests that the Office consider the listed documents and indicate that they were considered by making appropriate notations on the attached form.

With respect to the non-English language documents, Applicant submits the following remarks:

1. **JP 5-194359** - This document is believed to be related to U.S. Patent No. 5,288,758, listed on the attached Form PTO/SB/08.
2. **JP 9-510216** - This document is believed to be related to U.S. Patent Nos. 5,629,317, 5,643,916, 5,663,178, and 5,688,807, listed on the attached Form PTO/SB/08.
3. **JP 2004-534816** - This document is believed to be related to U.S. Patent Nos. 7,098,233, listed on the attached Form PTO/SB/08.
4. **WO 00/17191** - This document is believed to be related to U.S. Patent Application No. 6,620,840, listed on the attached Form PTO/SB/08.
5. **WO 04/014428** - This document is believed to be related to English-language European Patent Application No. 1 541 172, submitted herewith.
6. **WO 05/079845** - This document is believed to be related to U.S. Patent Application Publication No. 2008/0161419, listed on the attached Form PTO/SB/08.

The United States Court of Appeals for the Federal Circuit held in *Dayco Products, Inc. v. Total Containment, Inc.*, 329 F.3d 1358, 66 U.S.P.Q.2d (BNA) 1801 (Fed. Cir. 2003), that an "adverse decision" by another examiner may meet the materiality standard under the amended Rule 56, and thus, Applicants should disclose prior rejections of "substantially similar claim[s]" to the Office. See *a/so* M.P.E.P. § 2001.06(b). Accordingly, although Applicant is not representing that the Office Action

issued in co-pending Application No. 11/883,651 is material to the present application and is not admitting that any of the other claims are substantially similar, out of an abundance of caution, Applicant has listed the substantive Office Action issued in co-pending Application No. 11/883,651 on the attached form. A copy of the that Office Action is not enclosed, as it is available on the Image File Wrapper System of the United States Patent and Trademark Office's Patent Application Information Retrieval (PAIR) system.

This submission does not represent that a search has been made, or that no better art exists, and does not constitute an admission that each or all of the listed documents are material or constitute "prior art." If the Office applies any of the documents as prior art against any claim in the application and Applicant determines that the cited documents do not constitute "prior art" under United States law, Applicant reserves the right to present to the Office the relevant facts and law regarding the appropriate status of such documents. Applicant further reserves the right to take appropriate action to establish the patentability of the disclosed invention over the listed documents, should one or more of the documents be applied against the claims of the present application.

If there is any fee due in connection with the filing of this Statement, please charge the fee to our Deposit Account No. 06-0916.

Respectfully submitted,

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GARRETT & DUNNER, L.L.P.

Dated: March 19, 2010

By: /Jeffrey A. Freeman/  
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